



## **DEPARTMENT OF THE TREASURY**

### **Fiscal Service**

### **31 CFR Part 210**

### **RIN 1530-AA26**

### **Federal Government Participation in the Automated Clearing House**

**AGENCY:** Fiscal Service, Bureau of the Fiscal Service, Treasury.

**ACTION:** Notice of proposed rulemaking with request for comment.

**SUMMARY:** The Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) is proposing to amend its regulation governing the use of the Automated Clearing House (ACH) Network by Federal agencies. Our regulation adopts, with some exceptions, the Operating Rules Operating Guidelines (Operating Rules & Guidelines) developed by Nacha as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that Nacha has made since the publication of the 2019 Operating Rules & Guidelines. These changes include amendments set forth in the 2020 and 2021 Operating Rules & Guidelines, including supplements thereto, issued on or before March 31, 2021.

**DATES:** Comments on the proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments on this rule, identified by docket FISCAL-2021-0002, should only be submitted using the following methods:

- *Federal eRulemaking Portal*: [www.regulations.gov](http://www.regulations.gov). Follow the instructions on the Web site for submitting comments.
- *Mail*: Ian Macoy, Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785.

The fax and e-mail methods of submitting comments on rules to Fiscal Service have been decommissioned.

*Instructions*: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL-2021-0002 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. You can download this proposed rule at the following website: <https://www.fiscal.treasury.gov/ach/>.

In accordance with the U.S. government's eRulemaking Initiative, Fiscal Service publishes rulemaking information on [www.regulations.gov](http://www.regulations.gov). Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

**FOR FURTHER INFORMATION CONTACT:** Ian Macoy, Director of Settlement Services, at (202) 874-6835 or [ian.macoy@fiscal.treasury.gov](mailto:ian.macoy@fiscal.treasury.gov); or Frank J. Supik, Senior Counsel, at [frank.supik@fiscal.treasury.gov](mailto:frank.supik@fiscal.treasury.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions.

The ACH Network facilitates payment transactions between several participants. These participants include the:

- **Originator:** A company or individual that agrees to initiate an ACH entry according to an arrangement with a Receiver.
- **Originating Depository Financial Institution (ODFI):** An institution that receives the payment instruction from the Originator and forwards the ACH entry to the ACH Operator.
- **ACH Operator:** A central clearing facility that receives entries from ODFIs, distributes the entries to appropriate Receiving Depository Financial Institutions, and performs settlement functions for the financial institutions.
- **Receiving Depository Financial Institution (RDFI):** An institution that receives entries from the ACH Operator and posts them to the account of its depositors (Receivers).
- **Receiver:** An organization or consumer that has authorized an Originator to initiate an ACH entry to the Receiver's account with the RDFI.
- **Third-Party Service Provider:** An entity other than the Originator, ODFI, or RDFI that performs any functions on behalf of the Originator, ODFI, or RDFI in connection with processing ACH entries. These functions may include, for example, creating ACH files on behalf of an Originator or ODFI, or acting as a sending point or receiving point on behalf of an ODFI or RDFI.

Rights and obligations among participants in the ACH Network are governed by Nacha's Operating Rules & Guidelines. The Operating Rules & Guidelines establish standards for

sending and receiving ACH entries, provide specifications for the electronic transmission of transaction information, set forth the rights and obligations of the entities listed above when transmitting, receiving or returning ACH entries, and cover other related matters. The Operating Rules & Guidelines also provide guidance regarding best practices to ACH Network participants. There is an industry consensus that the Operating Rules & Guidelines provide a uniform set of standards for ACH transactions and that these standards enable efficient transaction processing.

Part 210 incorporates the Operating Rules & Guidelines by reference, with certain exceptions. From time to time, the Fiscal Service amends Part 210 to address changes that Nacha periodically makes to the Operating Rules & Guidelines or to revise the regulation as otherwise appropriate. Given their coverage across the payment system and to ensure consistent application to all ACH Network participants, the Federal Government generally adopts changes to the Operating Rules & Guidelines unless the changes address enforcement and compliance of the Operating Rules & Guidelines, would adversely impact government operations, or are irrelevant to Federal agency participation in the ACH Network.

Currently, Part 210 incorporates the 2019 Operating Rules & Guidelines, subject to certain exceptions. Nacha has adopted several changes since the publication of the 2019 Operating Rules & Guidelines, as reflected in the 2021 Operating Rules & Guidelines and supplements thereto.<sup>1</sup> We are proposing to incorporate in Part 210 most, but not all, of these changes.

We are requesting public comment on all the proposed amendments to Part 210.

## **II. Summary of Proposed Rule Changes**

Since the publication of the 2019 Operating Rules & Guidelines, Nacha published two versions of the Operating Rules & Guidelines, the 2020 Operating Rules & Guidelines and the

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<sup>1</sup> The 2021 Operating Rules & Guidelines also incorporates changes that Nacha previously adopted and incorporated into the 2020 Operating Rules & Guidelines. This Notice of Proposed Rulemaking also highlights applicable changes to the Operating Rules & Guidelines that were incorporated into the 2020 Operating Rules & Guidelines.

2021 Operating Rules & Guidelines. Below, we outline the major changes that were published in these updates.

A. 2020 Operating Rules & Guidelines Changes

The 2020 Operating Rules & Guidelines proposed several changes to the Operating Rules and Guidelines. These changes included raising the Same Day ACH dollar limit, differentiating the codes associated with certain return transactions, modifying data security requirements, clarifying fraud detection standards for WEB Debit transactions, and adding a new Same Day ACH processing window.

**Same Day ACH Dollar Limit Increase**

On March 31, 2021, Nacha approved a rule change to update the Same Day ACH per-transaction dollar limit from \$100,000 to \$1,000,000. At implementation, both Same Day ACH credits and Same Day ACH debits will be eligible for Same Day ACH processing up to \$1,000,000 per transaction. Nacha's rule will become effective on March 18, 2022 for all non-Federal Government ACH Network participants.

We propose to adopt this rule, effective March 18, 2022. Acceptance of this rule will enable individuals and entities to make Same-Day ACH payments of up to \$1,000,000 to the government and will enable Federal payments in the same amount. Failure to adopt this rule at the same time as other ACH Network participants may prevent clearance and processing of certain high-value transactions. For example, a taxpayer would be unable to make a tax payment exceeding \$100,000 to the Federal Government via Same-Day ACH, even though it could initiate a similarly-sized Same-Day ACH payment to a private party. The failed transaction and resulting confusion could negatively impact both the taxpayer and the Federal Government.

**Differentiating Unauthorized Return Codes**

The 2020 Operating Rules & Guidelines changed the usage of certain Nacha "Return Reason Codes," which afforded financial institutions more insight into the reason why a transaction was returned.

Under the prior rules, Nacha used one Return Reason Code (the R10 code) as a catch-all to identify transactions that were returned for several underlying return reasons, including some for which a valid authorization existed. Under the revised Rule, Nacha re-purposed another Return Reason Code (the R11 code) to allow ACH network participants to more readily identify ACH transactions that are being returned due to an error, even though an authorization exists for the transaction (e.g., if the authorization is for a different amount and/or date). The newly re-purposed code is used only to identify the return of a debit transaction in which there is an error, but for which there is an authorization.<sup>2</sup>

The Operating Rules & Guidelines will treat returned transactions using either code (R10 and R11) as unauthorized. However, an Originator will be permitted to correct the underlying error in an R11 return (if possible). Subject to certain other requirements, the Originator may be able to resubmit the underlying ACH transaction without obtaining a new authorization.<sup>3</sup>

We propose to adopt this change. Doing so will allow the Fiscal Service to remain consistent with industry practice, allowing for consistent operation across the ACH network. Moreover, using the R11 return code will provide greater insight into the reasons for the return of certain transactions.

### **Supplemental Fraud Detection Standards for WEB Debits**

The Fiscal Service previously adopted Nacha's updated fraud detection standards for WEB debit transactions.<sup>4</sup> Fiscal Service adopted this change with a delayed effective date of March 22, 2022.<sup>5</sup> The updated rule clarifies that Nacha requirements for a "commercially reasonable fraudulent transaction detection system" include the use of account validation services for WEB debit transactions. We propose to adopt the updated rule, which is non-

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<sup>2</sup> The 2021 Operating Rules & Guidelines implements a second phase of this rule. This second phase is discussed below.

<sup>3</sup> Some transaction errors, such as errors due to the failure to provide certain notices or the failure to use an acceptable "source document," cannot be corrected. In those cases, the Originator will be required to submit a new ACH entry.

<sup>4</sup> See 85 FR 15,715 (Mar. 19, 2020).

<sup>5</sup> Id.

controversial.

## **B. 2021 Operating Rules & Guidelines Changes**

The 2021 Operating Rules & Guidelines implement several additional changes beyond those in the 2020 Operating Rules & Guidelines. These changes include, but are not limited to, clarifying certain portions of the enforcement provisions of the Operating Rules & Guidelines, implementing a new Same Day ACH processing window, implementing a second phase of Nacha's return code rule, establishing a time limit on certain warranty claims, and implementing Nacha's contact registry.

### **Enforcement**

The 2021 Operating Rules & Guidelines defines an egregious violation within the context of rules enforcement.

We are proposing to not adopt this amendment. Under 31 CFR 210.2(d), the enforcement provisions of the Operating Rules & Guidelines are inapplicable to Federal agencies.

### **Differentiating Unauthorized Return Reasons**

As discussed above, Nacha repurposed the R11 Return Reason code to further differentiate between certain returned debit ACH transactions. The 2021 Operating Rules & Guidelines implements a second phase of this rule change, which will apply Nacha's existing Unauthorized Entry Fee to ACH debit entries that are returned with the newly repurposed code. As noted above, these transactions are associated with an authorization of a debit transaction when there is an error or defect in the payment such that the entry does not conform to the terms of the authorization.

The Fiscal Service proposes to adopt this rule change. Adoption of this change maintains consistency with other ACH Network participants and creates additional incentives them to minimize the amount of unauthorized (or incorrectly authorized) ACH transactions.

### **Limitation on Warranty Claims**

Nacha's 2021 Operating Rules & Guidelines impose time limits on an RDFI's ability to make a claim against an ODFI's authorization warranty.

The Operating Rules & Guidelines require an ODFI to warrant that an ACH entry has been properly authorized by the Receiver. Under the prior rules, there was no time limit on the ODFI's warranties. Instead, these limits were determined by state statutes of limitations, which may vary.

The change sets forth different time periods, depending upon whether the transaction affects consumer and non-consumer accounts. This rule allows an RDFI to make a claim for one year from the settlement date of an entry to a non-consumer account. In the case of an entry to a consumer account, the RDFI may make a claim for two years from the entry's Settlement Date. In addition, the RDFI can make a claim for entries settling within 95 calendar days from the Settlement Date of the first unauthorized debit to a consumer account.

The Fiscal Service proposes to adopt this rule change. Adoption will reduce the number of claims for older transactions, although liability in some instances may be shifted to the Federal Government. On balance, the Federal Government may benefit from uniform time limits that allow the opportunity to assert warranty claims when applicable, while also establishing firm time limits for asserting and defending claims.

### **Supplementing Data Security Requirements**

Nacha previously expanded its Data Security Requirements rule, which the Fiscal Service adopted,<sup>6</sup> but in the 2021 Operating Rules & Guidelines Nacha updated the effective date of part of this rule to be June 30, 2022. The rule expanded the existing ACH Security Framework to explicitly require large, non-financial institution Originators, Third-Party Service Providers, and Third-Party Senders to protect account numbers used in the initiation of ACH entries by rendering them unreadable when stored electronically.

The Fiscal Service proposes to adopt the new effective date. The Fiscal Service

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<sup>6</sup> See 85 FR 15,715 (Mar. 19, 2020).



continues to support the expansion of existing security requirements to require large non-financial institution Originators to protect account numbers used to initiate ACH transactions by rendering them unreadable while stored electronically.

### **ACH Contact Registry**

In April 2019, Nacha approved a rule creating an ACH contact registry. Under this rule, all ACH financial institutions are required to register contact information for their ACH operations and fraud and/or risk management areas. Financial institutions may voluntarily register contacts for additional personnel or departments at their discretion. The contact information is available to other registered ACH participating financial institutions, Payments Associations, ACH Operators, and Nacha to use in the event of ACH-related system outages, erroneous payments, duplicates, reversals, fraudulent payments and any other use within scope, such as identifying the proper contact for letters of indemnity. The contact information includes Routing and Transit Numbers (RTNs).

Nacha is implementing the ACH Contact Registry rule in two phases. Phase 1 became effective on July 1, 2020, the date on which the registration portal was opened for “Participating Depository Financial Institutions” to begin to submit and query contact information. Under Phase 2, Nacha’s enforcement authority for the Rule becomes effective.

We are proposing to not adopt this amendment. Although, participation in the registry can be expected to provide some benefits to the industry, all Federal Government RTNs are controlled by Treasury through the Fiscal Service. Fiscal Service prohibits debit origination to all Treasury-controlled ACH RTNs. To mitigate the risk of inappropriate use of any Treasury RTNs, Treasury prohibits their publication. Joining the registry will unnecessarily expose Treasury RTNs to parties without a need to know that information. Moreover, under 31 CFR 210.2(d), the enforcement provisions of the Operating Rules & Guidelines are inapplicable to Federal agencies.

### **Reversals**

The 2021 Operating Rules & Guidelines also clarify the proper circumstances under which an ACH entry may be reversed. Currently, the Operating Rules & Guidelines define a limited number of permissible reasons for reversing entries; however, they do not explicitly address improper uses of reversals. The amendments to the Operating Rules & Guidelines will specifically state that the initiation of reversing entries or files for any reason other than those explicitly permissible under the Operating Rules & Guidelines is prohibited and define non-exclusive examples of circumstances in which the origination of Reversals is improper.

The reversals rule will also establish additional formatting requirements for reversals; limit the ability to modify the contents of other fields in a reversing entry to allow changes only to the extent necessary to facilitate proper processing of the reversal; explicitly permit an RDFI to return an improper reversal; and expand the permissible reasons for a Reversing Entry to include an error in the effective entry date.

The Fiscal Service proposes to adopt this rule. The rule will clarify the circumstances under which entries can be reversed and assist in the efficient processing of ACH transactions involving the Federal Government.

### **Meaningful Modernization**

The 2021 Operating Rules & Guidelines also contain five amendments that NACHA characterizes as “Meaningful Modernization.” These five amendments are designed to improve and simplify the ACH user experience by facilitating the adoption of new technologies and channels for the authorization and initiation of ACH payments; reducing barriers to use of the ACH Network; providing clarity and increasing consistency around certain ACH authorization processes; and reducing certain administrative burdens related to ACH authorizations.

Specifically, the five rules will:

- Explicitly define the use of standing authorizations for consumer ACH debits;
- Define and allow for oral authorization of consumer ACH debits beyond telephone calls;

- Clarify and provide greater consistency of ACH authorization standards across payment initiation channels;
- Reduce the administrative burden of providing proof of authorization; and
- Better facilitate the use of electronic and oral Written Statements of Unauthorized Debit.

#### Standing Authorizations

The current authorization framework for consumer ACH debits encompasses recurring and single payments. Recurring payments occur at regular intervals, with no additional action required by the consumer to initiate the payment and are for the same or a similar amount. A single entry is a one-time payment and can be between parties that have no previous relationship. ACH Originators that have, or want to use, a different model for ongoing commerce do not have specific rules for payments that are a hybrid, falling somewhere in between recurring and single entries.

This rule change will define a Standing Authorization as an advance authorization by a consumer of future debits at various intervals. The consumer would initiate the future debits by additional actions, which differs from the requirements for recurring ACH transactions. The rule will allow the use of different Standard Entry Class codes. By allowing standing authorizations, Nacha proposes to fill the gap between single and recurring payments and enable businesses and consumers to make more flexible payment arrangements for relationships that are ongoing in nature.

The Fiscal Service proposes adoption of the amendment. The Fiscal Service believes that the Standing Authorization rule may increase options for initiating ACH transactions with the Federal Government. Although the Federal Government is not required to engage in Standard Authorizations, adoption of this rule would allow agencies to adopt new payment processes that better fit their needs, and the need of their customers.

#### Oral Authorizations

The current authorization language in the Operating Rules & Guidelines does not provide for oral authorizations of an ACH payment outside of a telephone call. Only the Telephone-Initiated Entry (TEL) Standard Entry Class Code has requirements to address the risks specific to an oral authorization.

The Oral Authorizations rule will define and allow Oral Authorizations as a valid authorization method for consumer debits distinct from a telephone call. Nacha asserts that enabling the broader use of Oral Authorizations will allow businesses to adopt ACH payments in transactional settings that make use of verbal interactions and voice-related technologies.

Under the rule, any oral authorization obtained via any channel will need to meet the requirement of an “oral authorization.” An oral authorization obtained over the Internet that is not a telephone call also will need to meet the risk and security requirements that currently apply to Internet-Initiated/Mobile (VEB) ACH entries. The rule will allow for standing authorizations to be obtained orally. In addition, the rule will allow for subsequent entries initiated under a standing authorization to be initiated through voice commands, instructions, or affirmations.

The Fiscal Service proposes adoption of the amendment. The Fiscal Service believes that the Oral Authorization rule may increase options for initiating efficient ACH transactions with the Federal Government.

#### Other Authorization Issues

The 2021 Operating Rules & Guidelines also include rules changes grouped as Other Authorization Issues, which cover other modifications and re-organizations of the general authorization rules for clarity, flexibility, and consistency.

The rule will re-organize the general authorization rules to better incorporate Standing Authorizations, Oral Authorizations, and other changes. In addition, the amended rule will explicitly state that authorization of any credit entry to a consumer account and any entry to a non-consumer account can be by any method allowed by law or regulation. Only consumer debit authorizations require a writing that is signed or similarly authenticated. The amended rule also

will require all authorizations to meet the standards of "readily identifiable" and "clear and readily understandable terms," which aim to reduce the incidence of erroneous transactions. Finally, the rule will apply the "minimum data element" standards that currently are only stated in the rules for Telephone-Initiated Entries to all consumer debit authorizations.

The Fiscal Service proposes adoption of the amendments. The Fiscal Service believes that these rule amendments will benefit the Federal Government and those who participate in ACH transactions with it. By adopting these amendments, the Federal Government will remain current with standard industry practice and benefit from the increased flexibility afforded by the authorization rules.

#### Alternative to Proof of Authorization

The 2021 Operating Rules & Guidelines also give an ACH Originator and Originator the option of accepting a return of a transaction in lieu of providing a copy of an authorization. Under the current Rules, if an RDFI requests proof of authorization of a transaction, an Originator is required to provide proof of authorization to its ODFI in such time that the ODFI can respond to the RDFI's request within ten banking days. Nacha reports that some ODFIs and Originators would prefer to agree to accept the return of the debit rather than expend the time and resources necessary to provide proof of authorization.

Nacha believes that the "Alternative to Proof of Authorization" rule will reduce an administrative burden on ODFIs and their Originators for providing proof of authorization in every instance in which it is requested by an RDFI. By allowing an alternative, the rule is intended to help reduce the costs and time needed to resolve some exceptions in which proof of authorization is requested. However, if the RDFI still needs proof of authorization, the ODFI and its Originator must provide the proof of authorization within ten days of the RDFI's subsequent request.

The Fiscal Service proposes adoption of these amendments. The Fiscal Service believes that these rule amendments may make certain ACH transaction processes more efficient. For

example, in certain instances a Receiver of an ACH transaction may dispute the authorization. If the Federal Government determines that it is inefficient to provide the requested proof of authorization, the new rule will allow it to return the ACH instead of expending resources to locate and transmit the information to the RDFI and Receiver.

#### Written Statement of Unauthorized Debit via Electronic or Oral Methods

The 2021 Operating Rules & Guidelines changes the “Written Statement of Unauthorized Debit” rule, which makes an RDFI responsible for obtaining a consumer's Written Statement of Unauthorized Debit (WSUD) prior to returning a debit as unauthorized. However, the current Operating Rules & Guidelines do not explicitly address electronically or orally provided WSUDs. Instead, they explicitly allow electronic records and electronic signatures generally, which has resulted in confusion about the electronic or oral acceptance of WSUDs. Nacha reports that anecdotal evidence suggests that the significant majority of WSUDs are still being obtained via paper using a wet signature.

The Written Statement of Unauthorized Debit via Electronic or Oral Methods rule reduces an administrative burden on RDFIs and their customers. It clarifies and makes explicit that an RDFI may obtain a consumer's WSUD as an electronic record, and an RDFI may accept a consumer's electronic signature, regardless of its form or the method used to obtain it. These changes will emphasize that WSUDs may be obtained and signed electronically, which could include the same methods permissible for obtaining a consumer debit authorization.

The Fiscal Service proposes adoption of these amendments. The Fiscal Service believes that the amendments to this rule may increase the efficiency of ACH transactions involving the Federal Government by explicitly allowing electronic records and signatures to be used for written statements of unauthorized debits. This may allow ACH network participants to expedite the processing of allegedly fraudulent electronic transactions involving the Federal Government and other parties.

#### **Minor Rules Topics**

These amendments change several areas of the Operating Rules & Guidelines to address minor issues or correct errata. These changes have little-to-no impact on ACH participants and no material impact on the Federal Government's participation in the ACH network. NACHA's minor rule amendments became effective on various dates, according to the date of the Nacha errata correction or other message.

The Fiscal Service proposes to adopt these minor rule amendments.

### **III. Section-by-Section Analysis**

In order to incorporate in Part 210 the Operating Rules & Guidelines changes that we are accepting, we are replacing references to the 2019 Rules & Guidelines with references to the 2021 Operating Rules & Guidelines.

#### 210.2(a)

We are proposing to amend the reference to NACHA—The Electronic Payments Association (NACHA) to simply refer to Nacha.

#### § 210.2(b)

We are proposing to amend the definition of “applicable ACH Rules” at § 210.2(d) by replacing the reference to the “2019 NACHA Operating Rules and Guidelines” with a reference to the ACH Rules with an effective date on or before March 31, 2021, as published in “2021 Nacha Operating Rules & Guidelines” and supplements thereto, including the rule change adopted on March 31, 2021 that will increase the Same Day ACH limit to \$1 million, effective March 18, 2022. In addition, we are proposing to expand the list of Operating Rules & Guidelines that are not incorporated by reference to include the Operating Rules & Guidelines governing the Participating DFI registry.

We are proposing to amend § 210.3(b) by replacing the references to the “2019 NACHA Operating Rules & Guidelines” with references to “Nacha's 2021 Operating Rules & Guidelines,” as amended through March 31, 2021.

#### § 210.6

We are proposing to amend paragraph (g) by replacing the reference to the “2019 NACHA Operating Rules and Guidelines” with a reference to the “2021 Nacha Operating Rules & Guidelines.”

#### **IV. Incorporation by Reference**

In this NPRM, Fiscal Service is proposing to incorporate by reference the 2021 Operating Rules & Guidelines, including Supplement #1-2021, as amended through March 31, 2021. The Office of Federal Register (OFR) regulations require that agencies discuss in the preamble of a proposed rule ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. In addition, the preamble of the proposed rule must summarize the material. 1 CFR 51.5(a). In accordance with OFR's requirements, the discussion in the Supplementary Information section summarizes the 2021 Operating Rules & Guidelines. Financial institutions utilizing the ACH Network are bound by the Operating Rules & Guidelines and have access to them in the course of their everyday business. The Operating Rules & Guidelines are available as a bound book or in online form from Nacha – The Electronic Payments Association, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, [info@nacha.org](mailto:info@nacha.org).

#### **V. Procedural Analysis**

##### *Request for Comment on Plain Language*

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make the rule easier to understand.

##### *Regulatory Planning and Review*

The proposed rule does not meet the criteria for a “significant regulatory action” as



defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

#### *Regulatory Flexibility Act Analysis*

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes on the Federal Government a number of changes that Nacha has already adopted and imposed on private sector entities that utilize the ACH Network. The proposed rule does not impose any additional burdens, costs or impacts on any private sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq) is not required.

#### *Unfunded Mandates Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

#### **List of Subjects in 31 CFR Part 210**

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud,  
Incorporation by reference.

#### **Words of Issuance**

For the reasons set out in the preamble, the Fiscal Service proposes to amend 31 CFR part 210 as follows:

## **PART 210 - FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE**

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335,  
and 3720.

2. In § 210.2:

- a. Revise paragraph (a) and the introductory text to paragraph (d);
- b. Redesignate paragraphs (d)(2) through (7) as paragraphs (d)(3) through (8); and
- c. Add new paragraph (d)(2).

The revisions and addition read as follows:

### **§ 210.2 Definitions.**

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(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by Nacha, a national association of regional member clearing house associations, ACH Operators, and participating financial institutions located in the United States.

\* \* \* \* \*

(d) *Applicable ACH Rules* means the ACH Rules as published in “2021 Nacha Operating Rules & Guidelines: A Complete Guide to Rules Governing the ACH Network” and Supplement #1-2021 (both incorporated by reference, see §210.3(b)), except:

\* \* \* \* \*

(2) Section 1.14 (governing the Participating DFI Contact registry);

\* \* \* \* \*

3. In § 210.3, revise paragraph (b) to read as follows:

### § 210.3 Governing law.

\* \* \* \* \*

(b) *Incorporation by reference.* Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. .To enforce any edition other than that specified in this section, the Bureau of Fiscal Service must publish a document in the Federal Register and the material must be available to the public. All approved material is available for inspection at the Bureau of the Fiscal Service, 401 14<sup>th</sup> Street, S.W., Room 400A, Washington, D.C. 20227, and from the sources listed elsewhere in this paragraph. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

(1) Nacha, 2550 Wasser Terrace, Suite 400, Herndon, Virginia 20171, tel. 703-561-1100, [info@nacha.org](mailto:info@nacha.org).

(i) 2021 Nacha Operating Rules & Guidelines, with an effective date on or before March 31, 2021.

(ii) Supplement #1-2021 to the 2021 Nacha Operating Rules & Guidelines.

(2) [Reserved]

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**David A. Lebryk**

Fiscal Assistant Secretary

